HIGH COURT OF UTTARANCHAL AT NINITAL.

Writ Petition No. 579 (S/S) 2004

1. Lekhraj Singh S/o late Sri Pyare Singh,
2. Vimal Singh Chauhan S/o Sri Lekhraj Singh,
R/o Mohalla Julahan, Combined Hospital Road,
Jaspur, Tehsil Jaspur,
District Udham Singh Nagar. ----------Petitioners.

Vs.

1. State of Uttaranchal through Principal Secretary,
Agriculture Section,
Uttaranchal State, Dehradun,
2. Director, Uttaranchal Krishi Utpadan Mandi Prishad,
Navin Mandi Esthal,
Bareilly Road, Haldwani (Nainital). ----------Respondents.

Sri Dharam Veer, learned Sr. Counsel for the petitioners.
Learned Standing Counsel for respondents.
And Sri. J.C. Belwal, learned counsel for the respondent no. 2.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Dharam Veer Sharma, leaned Sr. Counsel for the petitioners, learned Standing Counsel for the State and Sri J.C. Belwal, leaned counsel for Mandi Samiti/ respondent no. 2.

The petitioners have preferred this writ petition for a direction to respondents to provide job to petitioner no. 2 in Krishi Utpadan Mandi Samiti, Jaspur.

Brief facts of the case are that one Smt. Premwati W/o Sri Pyare Lal was the Bhumidhar with transferable rights of the land Khasra no. 60A measuring area 1.87 acre and Khasra no. 60B measuring area 0.14 acre total area 2.01 acre' at village Amritpur Tehsil Kashipur (now Tehsil Jaspur). After the death of Smt. Premwati, the land was recorded in the names of her 5 sons, namely, Balbir Singh, Mahavir Singh, Mahipal Singh, Lekhraj Singh and Yashpal Singh. The Govt. acquired and of petitioner no. 1 and his brothers vide order dated 28th January 1986 to construct a New Sub-market Yard, Jaspur Krishi Utpadan Mandi Samiti. The petitioner no. 1 had also received compensation of his share of the acquired land. At the time of

acquisition of the land, the respondents assured the petitioner that a member of the deprived family will be given job in Mandi Parishad for with the land is being acquired.

The petitioner no. 2 who is the son of the petitioner no. 1 is a graduate and he submitted has application to respondents on 19.03.2003 for providing job to him in pursuance of various Govt. orders issued to the effect that jobs should be provided to one member of the family whose land has been acquired. However, the respondents did not paid any heed to the request of petitioner no. 2, thus the petitioners were compelled to file this writ petition.

Submission of the leaned counsel for the petitioner is that after the death of Smt. Premwati on 22.09.1981, the name of he petitioner no. 1, alongwith his brothers, was recorded in the revenue records on 15.06.1984 which is evident form the extract of Khatauni, a copy of which is filed as annexure no. 2 to the writ petition. On 11.08.1986, the said land was recorded in the name of Krishi Utpadan Mandi Samiti, Jaspur, this fact is also proved form the aforesaid Khatauni. The petitioner no. 1 was also compensated. To establish this fact, the petitioners have filed certificate annexure no. 6 to the writ petition, issued by the In-charge Special Land Execution Officer, Nainital/ Udham Singh Nagar in which it is certified that the land of Sri Lekhraj Singh was acquired for Jaspur Mandi Parishad.

The petitioners have relief upon the Govt. Order dated 7th September 1976, Govt. Order dated 21st February 1980 and Govt. Order dated 5th January 1981 and submitted that the petitioner no. 1 is entitled to get job in Jaspur Mandi Samiti in view of the aforesaid G.Os.

Leaned counsel for the respondent no. 2 Sri Belwal has submitted that the Govt. Order dated 7th September 1976 has

been issued to give preference providing jobs to those persons whose land has been acquired and the petitioner cannot claim that he has a right to get job as per Govt. Order dated 7th September 1976 because this Govt. Order states that preference will be given to those persons in providing appointment in the establishment for which the land has been acquired. However, the Govt. Order dated 21st 1980 specifically states that at least one member of the family, the land of whose has been acquired, shall be provided job in the establishment for which the land has been acquired. The Govt. Order dated 5th January 1981 gives definition of the members of the family, which includes the son and daughter (unmarried).

From the perusal of the record, it cannot be disputed that at the time of acquisition of the land, the petitioner no. 1 was recorded as landowner. The land was acquired in the year 1986. Prior to acquisition of the land the G.O. dated 21.02.1980 and 05.01.1981 were issued by the Govt. and, as such, the son of petitioner no. 1 is entitled to get job under these G.Os in the Jaspur Mandi Samiti.

In the counter affidavit filed by the Deputy Director, Uttaranchal Krishi Utpadan Mandi Parishad it is stated in para-5 that at the time of acquisition of the land, the name of Smt. Premwati was entered as Bhumidhar in the Khatauni. This statement is against the documents filed by the petitioner in support of his version. The documentary evidence led in support of his version by the petitioner shows that at the relevant time, the petitioner no. 1 was recorded as Bhumidhar. In para no. 7 of the counter affidavit, it is stated that the names of the petitioner no. 1 and his brothers were recorded jointly and there is no prove that there was any partition between the petitioner and his brothers.

In the affidavit filed by the petitioner, it is stated that after the death of his grand mother, namely, Smt. Premwati on 22.09.1981, the partition was taken place amongst petitioner no. 1 and his brothers in 1981 and the land was divided on the spot and 1/5th share came in the name of petitioner no. 1. He has further submitted that in 1985 a Ration Card was prepared in his name which is being renewed after every five years after surrendering the old one. The Ration Card shows that the petitioner is residing separately. A supplementary counter affidavit has also been filed by the Dy. Director. (Administration), Uttaranchal Krishi Utpadan Samiti, annexure to this affidavit is a letter or Director, Mandi Parishad dated 31st December 2003. This letter is addressed to petitioner no. 2 pursuance of his application dated 23.12.2003 seeking appointment in the Mandi Samiti. By the aforesaid letter, the Director has stated that one person of the family has already been provided appointment and, as such, it is not possible to provide appointment to the petitioner no. 2. It is admitted fact by the parties that the son of Sri Balbir Singh (brother of petitioner no. 1) was provided appointment. Since after the death of Smt. Premwati, the petitioner, alongwith his brothers, was recorded in the revenue records as owner of he land and all the brothers were living separately. The ground on which the application of the petitioner has been rejected by the Director, Mandi Parishad is not sustainable. By providing appointment to tht son of Balbir Singh, the respondents cannot reject the claim of petitioner no. 2 as the petitioner's family is a separate family and their land was also acquired for Mandi Samiti, Jaspur.

Learned counsel for the respondents has further submitted that there is no post vacant in the Mandi Samiti, Jaspur and is it not possible in absence of any post to provide appointment to the petitioner.

From perusal of the record it appears that an advertisement was issued in the year 2003 to fill-up certain posts of Class-III and Class IV employee in the Mandi Parishad and Mandi Samities. Learned counsel for the respondent has submitted that in pursuance to that advertisement, the post has not been filed up so far.

In the circumstance it is provided that whenever for the posts are available, the petitioner's case may be considered by the respondents for appointment in the Mandi Parishad.

For the reason recorded above I direct the respondent no. 2 to reconsider the case of petitioner no. 2 for his appointment in Mandi Samiti or in Mandi Parishad, if the post is vacant and the petitioner no. 2 is otherwise eligible to be appointed against the vacant post. If the post is not vacant, his case may be considered whenever post will be available.

With this direction, the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

December 17, 2005:
NCM: